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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,809	02/27/2004	Joel E. Hitzelberger	380-153	7847
1009	7590	04/04/2008		
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507				
EXAMINER				
REDDING, DAVID A				
ART UNIT		PAPER NUMBER		
3723				
MAIL DATE		DELIVERY MODE		
04/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/788,809

Applicant(s)

HITZELBERGER ET AL.

Examiner

David A. Redding

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 and 21-26 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by

Hitzelberger et al. (US 7,124,467)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Hitzelberger et al. discloses a vacuum cleaner, comprising: a nozzle assembly 12; a canister assembly 14 connected to said nozzle assembly; a suction generator 30 carried on one of said nozzle assembly and said canister assembly; and a dirt collection vessel 26 carried on one of said nozzle assembly and said canister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said

dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 32 and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 36 having an inlet adjacent an edge of said housing and an outlet 66 which discharges into said main cavity 26.

Claims 1-7 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sovis et al. (US 4,959,885).

The patent to Sovis et al. discloses a vacuum cleaner, comprising: a nozzle assembly 10; a canister assembly 60 connected to said nozzle assembly; a suction generator 68 carried on one of said nozzle assembly and said canister assembly; and a dirt collection vessel 124 carried on one of said nozzle assembly and said canister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 12 with an agitator 14 mounted therein, and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 40 having an inlet, discrete from the main cavity (see figure 1), adjacent an edge of said housing and an outlet 132 discharging into said main cavity. The housing is considered to have a first section 33 and a second section 42. It is clear that said second section nests with said first section, that said first section includes a first channel 24 defined by a first series of walls, and said second section includes a second channel defined by a second series of walls (see figure 2).

By "nest", the examiner is defining this term as the second section (edge cleaning assembly) fitting within the first section (outer shell of nozzle).

Allowable Subject Matter

Claims 8-13,21-26 are allowed.

Response to Arguments

The terminal disclaimer filed on 7/18/07 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US patent 7,124,467 has been reviewed. The terminal disclaimer has been recorded.

Applicant's argument that Hitzelberger et al. or Sovis et al. have an edge cleaning duct with an outlet discharging into the main cavity is unpersuasive. Hitzelberger et al. has an outlet 66 from the edge cleaning duct 46 which discharges into main cavity 26 and Sovis et al. has outlet 132 which discharges into the main cavity from duct 140.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ David Redding /
Primary Examiner
Art Unit 3723

DAR